

AN ACT

1
2 RELATING TO PUBLIC UTILITIES; PROVIDING FOR TRANSITION COST RECOVERY;
3 PERMITTING INVESTMENT IN OR CONSTRUCTION, ACQUISITION OR OPERATION
4 OF CERTAIN GENERATING PLANTS; PERMITTING COMBINED GAS AND ELECTRIC
5 DISTRIBUTION UTILITIES TO FUNCTION WITHOUT SEPARATION; SETTING BILLING
6 REQUIREMENTS; PROVIDING APPLICATION AND APPROVAL PROCEDURES FOR
7 DISTRIBUTION COOPERATIVE UTILITIES; ELIMINATING THE PUBLIC UTILITY ACT
8 FROM A DELAYED REPEAL; REPEALING THE ELECTRIC UTILITY INDUSTRY
9 RESTRUCTURING ACT OF 1999.

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

11 Section 1. A new section of the Public Utility Act is enacted to read:

12 "TRANSITION COST RECOVERY.--

13 A. Notwithstanding repeal of the Electric Utility Industry Restructuring
14 Act of 1999, unless otherwise waived, a public utility shall be entitled to an opportunity
15 to recover its transition costs. Utilities may retain these transition costs as a regulatory
16 asset on their books pending recovery, which shall be completed by January 1, 2010.

17 B. For purposes of this section, "transition costs" means the prudent,
18 reasonable and unmitigable costs other than stranded costs, not recoverable
19 elsewhere under either federally approved rates or rates approved by the commission,
20 that a public utility would not have incurred but for its compliance with the requirements
21 of the Electric Utility Industry Restructuring Act of 1999 and rules promulgated
22 pursuant to that act relating to the transition to open access, and the prudent cost of
23 severance, early and enhanced retirement benefits, retraining, placement services,
24 unemployment benefits and health care coverage to public utility nonmanagerial
25 employees who are laid off on or before January 1, 2003, that are not otherwise
recovered as a stranded salary and benefits cost. Transition costs shall not include
costs that the public utility would have incurred notwithstanding the Electric Utility
Industry Restructuring Act of 1999."

1 Section 2. A new section of the Public Utility Act is enacted to read: SB

2 "PUBLIC UTILITIES--GENERATING PLANT INVESTMENT, CONSTRUCTION, 7
3 ACQUISITION AND OPERATION.-- 1

4 A. A public utility may invest in, construct, acquire or operate a 8
5 generating plant that is not intended to provide retail electric service to New Mexico 9
6 customers, the cost of which is not included in retail rates and which business activities 10
7 shall not be subject to regulation by the commission pursuant to the Public Utility Act, 11
8 except as provided by Section 62-9-3 NMSA 1978. This section shall not diminish a 12
9 public utility's obligation, by the prudent acquisition of resources, to serve its retail load 13
10 at a cost of service no higher than the average book cost plus fuel, other operating 14
11 and maintenance costs and the utility's authorized rate of return on investment of the 15
12 utility's unregulated generation constructed or acquired after January 1, 2001; 16
13 provided that this provision does not apply to a public utility that does not acquire 17
14 unregulated generation after January 1, 2001. The commission shall assure that the 18
15 regulated business is appropriately credited for any off-system sales made from 19
20 regulated assets. 21

22 B. This section shall apply only to a public utility that began investing
23 in, constructing or acquiring generating plant pursuant to this section before July 1,
24 2004. This section shall continue to apply until the latest of:

- 25 (1) January 1, 2015;
- (2) the date the public utility divests its interest in generating
plant acquired or constructed pursuant to the provisions of this section; or
- (3) the date the plant receives a certificate of convenience and
necessity in accordance with Section 62-9-1 NMSA 1978."

Section 3. A new section of the Public Utility Act is enacted to read:

"GAS AND ELECTRIC UTILITIES--COMBINED SERVICE.--A public utility that
provides both electricity and natural gas distribution services shall not be required to
functionally separate its electric and gas transmission, transportation and distribution
operations from each other. Any rule or order to the contrary is void. Nothing in this

1 section shall prevent a combined gas and electric distribution company from selling the
2 natural gas commodity to customers pursuant to tariffs approved by the commission."

S
B

3 Section 4. A new section of the Public Utility Act is enacted to read:

7
1

4 "BILLING--FRANCHISE FEES--GROSS RECEIPTS TAXES.--

8
P

5 A. A franchise fee charge shall be stated as a separate line entry on a
6 bill sent by a public utility or a distribution cooperative utility to a customer and shall
7 only be recovered from a customer located within the jurisdiction of the government
8 authority imposing the franchise fee.

a
g
e
3

9 B. Any gross receipts taxes collected on electric services received by a
10 retail customer in the state shall be stated as a separate line entry on a bill for electric
11 service sent to the customer by a public utility or distribution cooperative utility."

12 Section 5. A new section of the Rural Electric Cooperative Act is enacted to
13 read:

14 "DISTRIBUTION COOPERATIVE UTILITIES ORGANIZED IN OTHER STATES--
15 APPLICATION.--A distribution cooperative utility organized pursuant to the laws of
16 another state and providing bundled services in this state on April 1, 1999 to not more
17 than twenty percent of its total customers may file an application with the commission
18 seeking approval of its election to be governed by the laws related to electric
19 restructuring of the state where the utility was organized. The commission shall
20 approve the application if the distribution cooperative utility:

21 A. does not provide supply service to other than its service customers
22 in this state; and

23 B. remains subject to the jurisdiction and authority of the commission
24 for bundled service provided in this state."

25 Section 6. Section 62-3-3 NMSA 1978 (being Laws 1967, Chapter 96, Section
3, as amended) is amended to read:

"62-3-3. DEFINITIONS.--Unless otherwise specified, when used in the Public
Utility Act:

A. "affiliated interest" means a person who directly or indirectly,

1 through one or more intermediaries, controls or is controlled by or is under common
2 control with a public utility. Control includes instances where a person is an officer,
3 director, partner, trustee or person of similar status or function or owns directly or
4 indirectly or has a beneficial interest in ten percent or more of any class of securities
of a person;

5 B. "commission" means the public regulation commission;

6 C. "commissioner" means a member of the commission;

7 D. "municipality" means a municipal corporation organized under the
8 laws of the state, and H-class counties;

9 E. "person" means an individual, firm, partnership, company, rural
10 electric cooperative organized under Laws 1937, Chapter 100 or the Rural Electric
11 Cooperative Act, corporation or lessee, trustee or receiver appointed by any court.
12 "Person" does not mean a class A county as described in Section 4-36-10 NMSA 1978
13 or a class B county as described in Section 4-36-8 NMSA 1978. "Person" does not
14 mean a municipality as defined in this section unless the municipality has elected to
15 come within the terms of the Public Utility Act as provided in Section 62-6-5 NMSA
16 1978. In the absence of voluntary election by a municipality to come within the
17 provisions of the Public Utility Act, the municipality shall be expressly excluded from the
operation of that act and from the operation of all its provisions, and no such
municipality shall for any purpose be considered a public utility;

18 F. "securities" means stock, stock certificates, bonds, notes,
19 debentures, mortgages or deeds of trust or other evidences of indebtedness issued,
20 executed or assumed by a utility;

21 G. "public utility" or "utility" means every person not engaged solely in
22 interstate business and, except as stated in Sections 62-3-4 and 62-3-4.1 NMSA 1978,
23 that may own, operate, lease or control:

24 (1) any plant, property or facility for the generation,
25 transmission or distribution, sale or furnishing to or for the public of electricity for light,
heat or power or other uses;

1 (2) any plant, property or facility for the manufacture, storage, S
2 distribution, sale or furnishing to or for the public of natural or manufactured gas or B
3 mixed or liquefied petroleum gas for light, heat or power or other uses; but the term 7
4 "public utility" or "utility" shall not include any plant, property or facility used for or in 1
5 connection with the business of the manufacture, storage, distribution, sale or 8
6 furnishing of liquefied petroleum gas in enclosed containers or tank truck for use by P
7 others than consumers who receive their supply through any pipeline system a
8 operating under municipal authority or franchise and distributing to the public; g
9 e

10 (3) any plant, property or facility for the supplying, storage, 5
11 distribution or furnishing to or for the public of water for manufacturing, municipal,
12 domestic or other uses; provided, however, nothing contained in this paragraph shall
13 be construed to apply to irrigation systems, the chief or principal business of which is
14 to supply water for the purpose of irrigation;

15 (4) any plant, property or facility for the production,
16 transmission, conveyance, delivery or furnishing to or for the public of steam for heat
17 or power or other uses; or

18 (5) any plant, property or facility for the supplying and
19 furnishing to or for the public of sanitary sewers for transmission and disposal of
20 sewage produced by manufacturing, municipal, domestic or other uses; provided that
21 the terms "public utility" or "utility" as used in the Public Utility Act do not include any
22 utility owned or operated by a class A county as described in Section 4-36-10 NMSA
23 1978 either directly or through a corporation owned by or under contract with such a
24 county;

25 H. "rate" means every rate, tariff, charge or other compensation for
utility service rendered or to be rendered by a utility and every rule, regulation,
practice, act, requirement or privilege in any way relating to such rate, tariff, charge or
other compensation and any schedule or tariff or part of a schedule or tariff thereof;

I. "renewable energy" means electrical energy generated by means of
a low- or zero-emission generation technology that has substantial long-term

1 production potential and may include, without limitation, solar, wind, hydropower,
2 geothermal, landfill gas, anaerobically digested waste biomass or fuel cells that are not
3 fossil fueled. "Renewable energy" does not include fossil fuel or nuclear energy;

4 J. "service" or "service regulation" means every rule, regulation,
5 practice, act or requirement relating to the service or facility of a utility;

6 K. "Class I transaction" means the sale, lease or provision of real
7 property, water rights or other goods or services by an affiliated interest to a public
8 utility with which it is affiliated or by a public utility to its affiliated interest;

9 L. "Class II transaction" means:

10 (1) the formation after May 19, 1982 of a corporate subsidiary
11 by a public utility or a public utility holding company by a public utility or its affiliated
12 interest;

13 (2) the direct acquisition of the voting securities or other direct
14 ownership interests of a person by a public utility if such acquisition would make the
15 utility the owner of ten percent or more of the voting securities or other direct
16 ownership interests of that person;

17 (3) the agreement by a public utility to purchase securities or
18 other ownership interest of a person other than a nonprofit corporation, contribute
19 additional equity to, acquire additional equity interest in or pay or guarantee any
20 bonds, notes, debentures, deeds of trust or other evidence of indebtedness of any
21 such person; provided, however, that a public utility may honor all agreements entered
22 into by such utility prior to May 19, 1982; or

23 (4) the divestiture by a public utility of any affiliated interest
24 that is a corporate subsidiary of the public utility;

25 M. "corporate subsidiary" means any person ten percent or more of
whose voting securities or other ownership interests are directly owned by a public
utility; and

N. "public utility holding company" means an affiliated interest that
controls a public utility through the direct or indirect ownership of voting securities of

1 that public utility."

2 Section 7. Section 62-15-32 NMSA 1978 (being Laws 1939, Chapter 47,
3 Section 32, as amended) is amended to read:

4 "62-15-32. CONSTRUCTION OF ACT--INCONSISTENCY.--The Rural Electric
5 Cooperative Act shall be construed liberally. The enumeration of any object, purpose,
6 power, manner, method or thing shall not be deemed to exclude like or similar objects,
7 purposes, powers, manners, methods or things. Nothing contained in the Rural
8 Electric Cooperative Act shall be construed, however, to conflict with any duty to which
9 a cooperative is subject or with any benefit to which a cooperative is entitled under the
10 Public Utility Act. In the event any provision of the Rural Electric Cooperative Act is
11 held to be repugnant to any provision of the Public Utility Act or to a cooperative's
12 inclusion as a public utility thereunder, the latter shall be controlling and the former
13 shall be held repealed to the extent of the repugnancy. Nothing in the Public Utility Act
14 shall be deemed to authorize interference with, abrogation or change of the rights or
15 obligations of a party under a wholesale power supply agreement, mortgage or
16 financing agreement to which a distribution cooperative utility is a party."

15 Section 8. Laws 1998, Chapter 108, Section 82, as amended, is amended to
16 read:

17 "Section 82. DELAYED REPEAL.--The following are repealed effective July 1,
18 2003:

- 19 A. Chapter 63, Article 7 NMSA 1978;
- 20 B. the Telephone and Telegraph Company Certification Act;
- 21 C. the New Mexico Telecommunications Act; and
- 22 D. the Cellular Telephone Services Act."

23 Section 9. REPEAL.--Sections 62-3A-1 through 62-3A-23 NMSA 1978 (being
24 Laws 1999, Chapter 294, Sections 1 through 8, Laws 2000, Chapter 88, Section 1 and
25 Laws 1999, Chapter
294, Sections 9 through 23, as amended) are repealed.